

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 RICHARD MATHIS, individually and as  
5 Special Administrator of the Estate of JOE  
6 ROBINSON MATHIS aka JOE R.  
7 MATHIS; and as Trustee of the JOE  
8 ROBINSON MATHIS AND ELEANOR  
9 MARGHERITE MATHIS TRUST;  
10 JAMES MATHIS and ANTHONY  
11 MATHIS,

12 Plaintiffs,

13 v.

14 COUNTY OF LYON, a political subdivision  
15 of the State of Nevada, and RICHARD  
16 GLOVER, an individual,

17 Defendants.

Case No. 2:07-cv-00628-APG-GWF

**ORDER DENYING ORAL MOTION  
TO EXCLUDE EVIDENCE OF  
EMOTIONAL DISTRESS DAMAGES  
ARISING FROM DAMAGE TO  
PROPERTY**

18 At the October 28th calendar call, defendant Richard Glover argued that Nevada law does  
19 not allow recovery of emotional distress damages arising from harm to property. Glover did not  
20 raise this issue nor cite to relevant case law in his motion in limine. (Dkt. #272). Even if I  
21 considered this untimely argument, I would deny it. The case Glover cited, *Smith v. Clough*,  
22 states only that a plaintiff cannot pursue a claim for negligent infliction of emotional distress  
23 based on damage to his or her property (as opposed to being a bystander who witnesses harm to  
24 another person). 796 P.2d 592, 593-94 (Nev. 1990); *see also Merluzzi v. Larson*, 610 P.2d 739,  
742-43 (Nev. 1980). The plaintiffs do not assert a claim for negligent infliction of emotional  
distress, so *Smith* does not control. Glover cites no law for the proposition that the plaintiffs  
cannot recover for emotional distress arising out of damage to their property with respect to their  
state law tort claims. I therefore deny the oral motion.

25 Glover also raised for the first time arguments regarding emotional distress damages  
26 arising from a due process violation. Emotional distress damages caused by the denial of due  
27 process are recoverable in an action under 42 U.S.C. § 1983. *Carey v. Piphus*, 435 U.S. 247, 263-  
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1 65 (1978). However, the plaintiff must show “that he actually suffered distress because of the  
2 denial of procedural due process itself.” *Id.* at 263; *see also Jones v. Los Angeles Community*  
3 *College Dist.*, 702 F.2d 203, 207 (9th Cir. 1983) (stating the plaintiff must “demonstrate that her  
4 injury resulted directly from the wrongful deprivation of due process” and finding that there was  
5 support in the record for the finding that she “suffered mental and emotional distress because she  
6 believed that [her employer] treated her unfairly”).

7 DATED this 29<sup>th</sup> day of October, 2015.



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9 ANDREW P. GORDON  
10 UNITED STATES DISTRICT JUDGE  
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